

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

Criminal No. 3:12CR116CWR-FKB

RICHARD WHEAT

DEFENDANT

**RESPONSE TO DEFENDANT'S
MOTION TO CORRECT DECEIVER**

COMES NOW Plaintiff, United States of America, by and through its counsel Pshon Barrett, Assistant United States Attorney, and files its Response to Defendant's Motion to Correct Deceiver (Dkt 421) and states that this Court lacks subject matter jurisdiction over Defendant's claim. Despite the Court's lack of jurisdiction, Plaintiff will briefly address the merits of Defendant's Motion and would show as follows:

STATEMENT OF FACTS

1. A Judgment was entered December 18, 2013, in case number 3:12cr116CWR-FKB-009 and Defendant Richard Charles Wheat was ordered to pay a special assessment of \$100.00 and a fine of \$1,500.00. (Dkt. 316)
2. The Judgment entered in this cause orders that payment is to begin immediately and also may be combined with a payment schedule of monthly installments of \$50.00 to commence 60 days after release from imprisonment to a term of supervision, with special instructions that "payment of criminal monetary penalties is due during imprisonment . . . [and to be] made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program." (Dkt. 316, p. 6)
3. Pursuant to the Plea Agreement filed June 25, 2013, Defendant agreed ". . . to participate in the Bureau of Prisons' Inmate Financial Responsibility Program ["IFRP"] regardless of whether the Court specifically directs participation or imposes a schedule of payments." (Dkt. 239, ¶5)

4. The Inmate Financial Plan dated February 5, 2014, indicates Defendant authorized the Bureau of Prisons to pay \$25.00 quarterly towards his debt obligation. (Exhibit A)
5. The Inmate Financial Plan dated October 8, 2015, indicates Defendant authorized the Bureau of Prisons to pay \$35.00 monthly towards his debt obligation. (Exhibit B)
6. The Inmate Activity Record (Form BP-S381.058) dated March 23, 2016, indicates Defendant's refusal to participate in the IFRP (Exhibit C).
7. Pursuant to the attached declaration of Lisa Bullock, Paralegal in the U. S. Attorney's Office Financial Litigation Unit, the sum of \$252.17 has been credited to Defendant's debt through his prior participation in the IFRP. (Exhibit D)
8. According to the Bureau of Prisons' inmate locator, Defendant (BOP Register Number 16843-043) is currently incarcerated at Oakdale II FCI in Oakdale, Louisiana.

ARGUMENT

Defendant has filed the instant Motion with the sentencing Court, requesting that it enter an Order enjoining the Bureau of Prisons from removing funds from Defendant's Bureau of Prisons Commissary Account, essentially requesting that his prison earnings be exempt from participation in the IFRP. Pursuant to 18 U.S.C. § 3613(c), a lien exists in favor of Plaintiff against all of Defendant's property, which includes any funds held in an inmate's commissary account. Defendant, in his Plea Agreement, agreed to participate in the IFRP, the Judgment instructed him to participate while imprisoned, yet he now refuses to participate, as evidenced by Exhibit C, which violates this Court's Judgment.

Further, if Defendant no longer wishes to participate in the IFRP, he is required to exhaust all administrative remedies before approaching the Court for relief. Any challenge to participation in and administration of the IFRP is only applicable under 28 U.S.C. § 2241 and should be filed in the district where Defendant is confined. *U.S. v. Lott*, 227 Fed. App'x. 414 (2007) The instant Motion is filed, not in the district where Defendant is confined, but instead, in the Southern District of Mississippi, which is an improper venue.

In conclusion, the Government respectfully requests this Court deny Defendant's Motion because the Court lacks subject matter jurisdiction.

DATED June 22, 2016

Respectfully submitted,

GREGORY K. DAVIS
United States Attorney

BY: /s/ Pshon Barrett
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CERTIFICATE OF SERVICE

I, PSHON BARRETT, Assistant United States Attorney, certify that a true and correct copy of the above and foregoing Response was served via United States Mail, postage prepaid, on Defendant at the following address:

Richard C. Wheat: LEGAL MAIL
BOP Register Number 16843-043
FCI Oakdale I
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 5010
OAKDALE, LA 71463

DATED June 22, 2016

/s/ Pshon Barrett
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